IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 183 OF 2006.

Dadu Mukinda Patil
since deceased through his LRs.
Kamlabai Dadu Patil & others. ... Appellants.
Versus.
Bapu Vithu Patil. ... Respondent.

Shri Umesh Mankapure for the Appellants.

Shri Sanjay Prabhu i/by Shri N.V.Bandiwadekar for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 20th November, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. The Appellant filed a suit for redemption of mortgage dated 28th June 1969 by contending that the document was in the nature of a mortgage by conditional sale. The trial Court decreed the suit. The Appellate Court has interfered with the decree by holding that the transaction is of a sale with a condition of re-purchase.

2. The learned Advocate for the Appellants has placed reliance on the decision of the Apex Court in the case of Vidhyadhar v/s. Manikrao and another (AIR 1999 S.C. 1441). He submitted that the recitals in the documents clearly establish that the document was of a mortgage by conditional sale. He submitted that the document itself shows that an option was granted to the

Appellants to repay the mortgage money any time before completion of 10 years. He submitted that the said condition itself indicates that the transaction was not of a mortgage.

3. I have considered the submissions. The decision of the Apex Court in the case of Vidhyadhar (supra) will not help the Appellants as what has been recorded by the Apex Court in paragraph 48 is in the light of the facts of the case before it. In the present case, the document does not indicate that there was relationship of debtor and creditor between the parties. There are no stipulations in the document regarding payment of interest. Considering the nature of the document and the surrounding circumstances, the Appellate Court was justified in arriving at a finding that the document was of a sale. No substantial question of law arises. The Second Appeal is accordingly dismissed.

Judge.